1946. **K** **File No.** O. Harijans

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Legal Debt

A- **BRANCH**

Subject:— Opinions under the Harijans Act 1946

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C O N T E N T S.

Legal Department File No.O.Harijans/1946

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1	R.I.No.8299 22-10-46	Whether denying admission to Harijans to Brahman Sabha Hall on the occasion of Ganpati Festival is a congnizable-offence.-	1-10

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R.I.No.9299
22-10-46.

Submitted with reference to H.P.M.'s minute in the margin at p. 1 ante. At the time of the discussion on the Bombay Harijan (Removal of Social Disabilities) Bill in the Bombay Legislative Assembly, Govt. accepted certain amendments with a view to widening the scope of the Bill. Principal Gajendragadkar wants to know whether in view of these amendments it would be a cognisable offence on the part of the executive of the Brahman Sabha to deny admissin to its Hall to Harijans on the occasion of these items of the programme in connection with the Ganpati festival which are open to caste Hindus other than the members of the Brahman Sabha. The R.L.A. is requested to advise on this question.

2. It appears that during the Ganpati festival celebrations at the Hall of the Brahman Sabha there are certain items of entertainment which are open only to the members of the Brahman Sabha, while there are others to which Hindus other than the members are also admitted. The question is whether a Harijan would get a right of admission to the Brahman Sabha Hall in the case of the latter kind of items. A place where the image of Ganapati is installed during the Ganpati festival and where different kinds of programmes (of entertainment, lectures etc.) are arranged would not be a 'place of public amusement' or a 'place of public entertainment' withing the meaning of clauses 2(d) or 2(e) of the Bombay Harijan (Removal of Social Desabilities) Bill, 1946. Clause 3 prescribes the rights

of Harijans. Sub-clause (a) of clause 3 provides for the rights to offices. Sub-clause (b) (i) provides for ~~the right of~~ access to river, streams etc., (b)(ii) for public conveyances, (b)(iii) for places set apart for charitable purposes, (b)(iv) for places of public amusement of entertainment, (b)(v) for shops, (b)(vi) applies to benefits under charitable trust. Sub-clause (b)(vi) which appears to be of some relevance provides that no Harijan shall be prevented from having access to or using any place set apart or maintained for the use of Hindus generally, but not for the use of any particular section or class thereof. In order that this clause should be applicable two things are necessary. The place should be set apart or 'maintained' for the use of Hindus. The word 'maintained' does not mean to provide or construct but means to keep up; it signifies supporting what is already brought into existence (See Iyer's Law Lexicon, p.767). It appears to connote a kind of right in favour of the persons for whose benefit a thing is maintained; similarly setting apart also implies the investment of a right in a person for whose benefit it is set apart. This would not appear to be true in the case of places where the image of Ganpati is set up under the auspices of an institution. The Brahman Sabha e.g. in this case would not be under any obligation to celebrate the festival every year for the benefit of the Hindu community. Similarly it would be open to it to declare that all the items of the programme would be open only to the members of the Sabha. Consequently it does not appear that clause 3 of the Bill would give any right to Harijans to enter the Brahman Sabha Hall at the time of

the Ganpati festival celebrations.

3. As the Bill has not yet passed into an Act it has been passed by the Bombay Legislative Assembly only,- this reference may also be seen by B. Branch.

Sd/-

A.S.

The President of the Dakshini Brhaman Sabha states that during the annual Ganpati festival of the Brahman Sabha, certain items of the programme are (Contd)

restricted to the members, while others are open to the public. He desires to know whether under the provisions of the Bombay Harijan (Removal of Social Disabilities) Act,1946 (as passed by the Legislative Assembly) it would be ~~cognizable~~ offence on the part of the Executive of the Sabha to deny admission ~~to~~ its Hall to Harijans on the occasions of those items of the programme to which caste Hindus other than members of the Sabha are admitted.

Section 3 of the Act, as passed by the Legislative Assembly, provides that notwithstanding anything contained in any instrument or any law or usage to the contrary, no Harijan shall, merely on the ground that he is a Harijan —

(a) be ineligible for office under any authority constituted under any law, or

(b) be prevented from having access to any of the places mentioned in sub-clauses (i) to (vii).

Under sub-clause (iv) of clause (b) of section 3, merely on the ground that he is a Harijan a Harijan shall not be prevented from having access to a place of public amusement or a place of public entertainment. The expression "place of public amusement" as defined in clause (d) of section 2 means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary , where music, singing, dancing or any diversion of game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money, or with the intention that money may be collected from those admitted, and includes a race-

course, circus, theatre, music hall, billiard-room, gymnasium or fencing school. The Hall of the Brahman Sabha where Ganpati is kept and to which free admission is open to the public will not be a place of public amusement as defined in clause (d) of section 2. Nor would the Hall fall within the meaning of the expression "place of public amusement" as defined in clause (e). Consequently, if Harijans are prevented from having access to the Hall of the Brahman Sabha, it would not fall under sub-clause (iv) of clause (b) of section 3.

If, as stated by the President of the Sabha, during the Ganpati festival celebrated in the Hall of the Sabha certain items of the programme are unrestricted and are kept open to the public, the Hall may be deemed to be a place maintained or kept for the use of Hindus generally, and the matter may fall under sub-clause (vi) of clause (b) of section 3.

Sd/-.
D.S.

I agree and suggest the following reply:-

The question for the consideration of the R.L.A. is whether under the provisions of L.A. Bill No. XXV of 1946 (A Bill to provide for the removal of Social disabilities of Harijans) as read for the third time and passed by the Legislative Assembly on the 2nd October, 1946, it would be Cognizable offence on the part of the Executive of the Dakshini Brahman Sabha to refuse admission to its Hall to Harijans on the occasion of the items of the programme during the annual celebration of the Ganpati Festival to which caste Hindus other than members of the Sabha are admitted.

Sub-clause (iv) of clause (b) of section 3, provides inter alia that no Harijan shall merely on the ground that he is a Harijan be

prevented from having access to a place of public amusement The expression "place of public amusement" as defined in clause (d) of section 2 means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion of game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money, or with the intention that money may be collected from those admitted, and includes a race-course, circus, theatre, music hall, billiard-room, gymnasium or fencing school. It is not clear from the letter of the President of the Dakshini Brahman Sabha whether on the occasions when caste Hindus are admitted to the Sabha Hall during the Ganpati celebrations any charge is made for admission or whether admission is free and with no intention to collect money from those admitted. It, as I presume, admission is entirely free and no collections are subsequently made the Sabha Hall will not cover within the meaning of "place of public amusement" and if Harijans are excluded from the Hall such exclusion will not be hit by sub-clause (iv) of clause (b) of section 3.

Sub-clause (vi) of clause (b) of section 3 lays down that no Harijan shall merely on the ground that he is a Harijan be prevented from having acess to any place set apart or maintained for the use of Hindus generally but not for the use of any particular section or class thereof.

If, as stated by the President of the Sabha, during the Ganpati festival celebrated in the Hall of the Sabha certain items of the programme are unrestricted and are kept open to the public, the Hall may be deemed to be a place maintained or kept for the use of Hindus generally, and the matter may fall under sub-clause (vi) of clause (b)

of section 3.

Sd/- A.R.KHAN.

The reply proposed is hardly satisfactory. Neither A.S. nor D.S. has approached the case from the proper angel. I fail to see how we can give any definite opinion on the points raised unless we first examine the rules regulating the constitution of the Dakshini Brahman Sabha. Reply as follows.

The question for the consideration of the R.L.A. is whether under the provisions of L.A. Bill No.XXV of 1946 (A Bill to provide for the removal of the social disabilities of Harijans)as read for the third time and passed by the Legislative Assembly on 2nd October 1946, it would be a congnizable offence on the part of the executive of the Dakshini Brahman Sabha to refuse admission to its Hall to Harijans on the occasion of the Ganpati festival celebrations to which caste Hindus other than members of the Sabha are admitted.

2. Sub-Clause (iv) of clause (b) of section 3 of the said Bill provides inter alia that no Harijan shall merely on the ground that he is a Harijan be prevented from having access to a place of public amusement. The expression "place of public amusement" as defined in clause (d) of section 2 means any place, enclosure building, tent, booth, or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money, or with the intention that money may be collected from those admitted and includes a race-couse, circus, theatre, music hall, billiard-room, gymnasium or fencing school. It is not clear from the letter of the President of the Dakshini

Brahman Sabha whether on the occasions when caste Hindus are admitted to the Sabha Hall during the Ganpati celebrations any charge is made for admission or whether admission is free and with no intention to collect money from those admitted. If, as I presume, admission is entirely free and no collections are subsequently made, the Sabha Hall will not come within the meaning of "place of public amusement" as defined in clause (d) of section 2, ~~2~~ and if Harijans are excluded from the Hall, such exclusion will not be hit by sub-clause (iv) of clause (b) of section 3.

3. Sub-clause (vi) of clause (b) of section 3 lays down that no Harijan shall merely on the ground that he is a Harijan be prevented from having access to <u>any place set apart or maintained for the use of Hindus generally but not for the use of any particular section or class thereof.</u> If the Brahman Sabha Hall is not a place set apart or maintained for the use of Hindus generally but is one primarily for the use of the Brahman members of the Sabha, the exclusion of Harijans therefrom will not, it seems, contravene the provisions of sub-clause (iv) of clause (b) of section 3 although for a limited purpose the Executive of the Sabha may permit caste Hindus to use the Hall not by virtue of any right but by leave and licence. Much however depends upon the rules regulating the constitution of the Dakshini Brahman Sabha and its Hall, and it would neither be safe nor desirable to express any definite opinion without first examining those rules.

SG/-
6/11/46

Office of the R.L.A.

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are subsequently made, the Sabha Hall will not come within the meaning of "place of public amusement" as defined in clause (d) of section 2, and if Harijans are excluded from the Hall, such exclusion will not be hit by sub-clause (iv) of clause (b) of section 3.

3. Sub-clause (vi) of clause (b) of section 3 lays down that no Harijan shall merely on the ground that he is a Harijan be prevented from having access to any place set apart or maintained for the use of Hindus generally but not not for the use of any particular section or class thereof. If the Brahman Sabha Hall is not a place set aprat or maintained for the use of Hindus generally but is one primarily for the use of the Brahman members of the Sabha, the exclusion of Harijans therefrom will not, it seems, contravene the provisions of sub-clause (vi) of clause (b) of section 3 although for a limited purpose the Executive of the Sabha may permit caste Hindus to use the Hall not by virtue of any right but by leave and licence. Much however depends upon the rules regulating the constitution of the Dakshini Brahman Sabha and its Hall, and it would neither be safe nor desirable to express any definite opinion without first examining those rules.

Sd/-

Remembrancer of Legal Affairs.

H.P.M.

RHB.
6.7.